

REMARKS

Claims 1, 2, 4, 9, 14, 16, 24, 28, 30, 31, 33, 35 and 45-50 are pending in the subject application. Claims 3, 5-8, 10-13, 15, 17-23, 25-27, 29, 32, 34, 36-39 were previously cancelled. No claims are cancelled, withdrawn, amended, or added via the present Response.

Claims 1, 2, 4, 9, 14, 16, 24, 28, 30, 31, 33, 35 and 45-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,291,412 to Kvita et al. (the '412 patent) in view of U.S. Pat. No. 6,407,049 to Willey et al. (the '049 patent), U.S. Publ. Pat. Appln. No. 2003/0232734 to Kitko et al. (the '734 publication) or U.S. Pat. No. 4,299,717 to Cottrell et al. (the '717 patent). For the reasons descried below, the Examiner's rejection is respectfully traversed.

The Examiner contends that the '412 patent discloses water-soluble granules of phthalocyanine compounds comprising from 2 to 50% by weight of a water-soluble phthalocyanine compound, from 10 to 95% by weight of an anionic dispersing agent, from 0 to 25% by weight of a water-soluble organic polymer, from 0 to 10% by weight of a further additive, and from 3 to 15% by weight of water. However, the Examiner expressly admits that the '412 patent fails to disclose "phthalocyanine granules containing an inorganic salt and/or a low molecular weight organic acid or salt thereof or granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims." (see page 5 of the instant Office Action). To address the admitted deficiencies of the '412 patent, the

Examiner relies on the '049 patent, the '734 publication, or the '717 patent and contends it would be obvious to select component(s) from the compositions of these references and incorporate them in the compositions of the '412 patent.

However, the Examiner is respectfully reminded that “[t]he mere fact that references can be combined or modified does **not** render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” (emphasis added) *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007). In addition, “[a] statement that modifications of the prior art to meet the claimed invention would have been ‘well within the ordinary skill of the art at the time the claimed invention was made’ because the references relied upon teach that all aspects of the claimed invention were individually known in the art is **not sufficient** to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.” MPEP §2143.01 (citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Finally, “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). The Examiner has failed to properly establish a prima facie case of obviousness with respect to the claimed invention, as described in greater detail below.

Notably, as Applicants argued in Applicants’ previous response, the Examiner’s primary reference, i.e., the '412 patent, not only fails to disclose Applicants’ claimed

component (c), but also fails to disclose the instantly claimed amount of this component. The Examiner contends that, based on the minimal requirements with respect to weight percents of the components in the composition of the '412 patent, there is room in the composition of the '412 patent for Applicants' claimed component (c). However, the Examiner's logic is flawed, as described in greater detail below.

In particular, the '412 patent specifically teaches "water-soluble granules of phthalocyanine compounds comprising

- a) from 2 to 50% by weight of a water-soluble phthalocyanine compound,
- b) from 10 to 95% by weight of an anionic dispersing agent,
- c) from 0 to 25% by weight of a water-soluble organic polymer,
- d) from 0 to 10% by weight of a further additive and
- e) from 3 to 15% by weight of water, based on the total weight of the granules."

(emphasis added) (see column 1, lines 30-40). The Examiner has added the minimum weight percent of each respective component to conclude that the composition of the '412 patent only requires 15% by weight of components (a)-(e). This is not necessarily how ranges are utilized or relied upon. For example, according to the Examiner's logic, the composition of the '412 patent could alternatively comprise these components in an amount of 195% by weight based on the total weight of the composition in view of the "upper limits" of the ranges of these components. Clearly, it cannot exceed 100% by weight, and to argue otherwise ignores basic principles of math. Similarly, the total composition cannot

comprise less than 100% by weight based on the total weight of the composition, as suggested by the Examiner.

In addition, the Applicants respectfully submit that the components enumerated in the '412 patent are exhaustive despite the use of the term "comprising" in the preamble of the components included in the composition of the '412 patent. For example, in the '412 patent, when components (c) and (d) are not present (the lower limit is 0% by weight), and components (a) and (e) are present in the minimal amount recited (2% and 3% by weight, respectively), the anionic dispersing agent, or component (b), makes up the bulk of the composition at 95% by weight such that the total weight of the composition equals 100% (2% + 3% + 95%). Said differently, the components recited in the '412 patent necessarily add up to 100% by weight of the composition. Component (d) of the composition of the '412 patent is the "catch all" residual component for any additional components that are not specifically recited in (a)-(e). This is supported by the '412 patent's failure to disclose or even teach any optional components whatsoever other than those disclosed for component (d), i.e., the "further additives," anywhere throughout the '412 patent. However, even this component has an upper limit in its range of 10% by weight, as described in greater detail below.

In particular, the '412 patent expressly states that its composition may comprise a "further additive" in an amount of from 0 to 10% by weight as component (d). This is supplemented in column 11, line 65-Column 12, line 4 of the '412 patent, which states "[t]he granules according to the invention may comprise further additives, for example

wetting agents, water-insoluble or water-soluble dyes or pigments, and also dissolution accelerators and optical brighteners. Such additives are present in an amount of from 0 to 10% by weight, based on the total weight of the granules.” Thus, it is clear that the ‘412 patent recites a laundry list of optional components, and even this laundry list does not include instantly claimed component (c). Not only is claimed component (c) not disclosed in the ‘412 patent, but it is clearly that optional components are only included in the ‘412 patent in an amount up to 10% by weight.

Clearly, the Examiner is still wholly ignoring the upper limit of the “further additives” taught by the ‘412 patent. For example, even assuming for argument’s sake that the Examiner’s assertion that the recited components may only be present in an amount of 15% by weight in the composition of the ‘412 patent, the ‘412 patent expressly teaches that further additives, which do not even include claimed component (c) of the subject application, may only be present in an amount of up to 10% by weight based on the total weight of the composition. Conversely, claimed component (c) is instantly claimed to be present in an amount of at least 25% by weight based on the total weight of the claimed composition. This amount is 250% more than that which is allowed pursuant to the teachings of the ‘412 patent.

Thus, to summarize the Examiner’s argument, the components of the composition of the ‘412 patent may only be 15% by weight of the composition based on the total weight of the composition, and, components not taught by the ‘412 patent may be included in amounts 250% more than the upper limit expressly taught by the ‘412 patent with respect to further

additives. The Examiner wholly ignores the expressly taught ranges to arrive at the Examiner's assertion that Applicants' claimed component (c) could be included in the composition of the '412 patent in an amount 250% more than the express teachings in the '412 patent. Thus, within the Examiner's argument, the Examiner strictly construes the lower limits of each component of the composition of the '412 patent, but then assumes the upper limit expressly taught by the '412 patent is irrelevant. These conclusory, and even inconsistent, arguments by the Examiner fail to establish a prima facie case of obviousness with respect to claim 1 of the subject application.

Notwithstanding the fact the Examiner has failed to establish a prima facie case of obviousness, the Applicants again point out the unexpected results obtained via the subject invention as illustrated in the previously submitted Declaration under 37 CFR § 1.132, the contents of which are incorporated by reference herein. As the Examiner is aware, "[e]vidence of unobvious or unexpected advantageous properties, such as superiority in a property the claimed compound shares with the prior art, can rebut prima facie obviousness." MPEP § 716.02(a). In addition, "[e]vidence that a compound is unexpectedly superior in one of a spectrum of common properties . . . can be enough to rebut a prima facie case of obviousness." *Id.* In response to the previously filed Declaration, the Examiner asserted that the data only illustrates four specific embodiments (formulations B-E), and opined this was not sufficient. However, the Applicants respectfully note that, as set forth in MPEP § 716.02(a), "[n]o set number of examples of superiority is required." (citing *In re Chupp*, 816 F.2d 643, 646, 2 USPQ2d 1437, 1439 (Fed. Cir. 1987)).

In particular, the Examiner contends that the secondary references disclose claimed component (c), and that it would be obvious to include claimed component (c) in the instantly claimed amount in the composition of the Examiner's primary reference, i.e., the '412 patent. However, as but one example, the '717 patent expressly teaches, with respect to inorganic salts, that "[i]t is particularly preferred to have present an inorganic filler salt to provide the compositions with sufficient bulk at an acceptable cost." (emphasis added) (see column 4, line 47-49 of the '717 patent). The '717 patent also states that "[t]hese filler salts are generally considered to be inert materials . . ." (see column 4, line 52-53 of the '747 patent). Therefore, the '717 patent teaches these salts may be utilized only to reduce the overall cost of the compositions. Thus, even the '717 patent did not utilize such inorganic salts for purposes of improving physical properties, such as dissolution rate and/or absorbance. Therefore, one of skill in the art would have no reason whatsoever to expect that the inclusion of such inorganic salts would improve such physical properties, as clearly illustrated in Tables 1 and 2 of the previously submitted Declaration, based on the teachings of the '717 patent.

The Examiner also contends that it is well known that inorganic salts are soluble and thus expected to improve dissolution rate. However, such an assertion wholly ignores the excellent dissolution rates of phthalocyanines in nonionic surfactants. By way of example, it is well known that both table salt and sugar dissolve in water. However, that does not necessarily mean it is predictable that adding salt to sugar would improve the dissolution rate of the mixture because salt is known to readily dissolve. Therefore, not only has the

Examiner failed to establish a prima facie case of obviousness, as described above, but the Applicants have even illustrated unexpected results achieved via the claimed composition relative to the composition of the '421 patent.

In view of the foregoing, the Applicants respectfully submit that claims 1, 2, 4, 9, 14, 16, 24, 28, 30, 31, 33, 35 and 45-50 are both novel and non-obvious over the prior art, including over the '412 patent, the '049 patent, the '734 publication and the '717 patent, either individually or in combination. As such, the Applicants submit that the claims are in condition for allowance, and such allowance is respectfully requested.

This Amendment is submitted along with the proper fee for a one-month extension of time; thus, it is believed that no additional fees are due. However, if necessary, the Commissioner is authorized to charge Deposit Account No. 08-2789 in the name of Howard & Howard Attorneys PLLC for any additional fees or to credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

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